

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference NO 7490/WO	FOR FURTHER ACTION		See Form PCT/IPEA/416
International application No. PCT/EP2004/008566	International filing date (day/month/year) 30.07.2004	Priority date (day/month/year) 25.08.2003	
International Patent Classification (IPC) or national classification and IPC A47J31/40, A47J31/06			
Applicant NESTEC S.A.			

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of _____ sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																								
<p>4. This report contains indications relating to the following items:</p> <table> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
<input checked="" type="checkbox"/>	Box No. I	Basis of the report																						
<input type="checkbox"/>	Box No. II	Priority																						
<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability																						
<input type="checkbox"/>	Box No. IV	Lack of unity of invention																						
<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement																						
<input type="checkbox"/>	Box No. VI	Certain documents cited																						
<input type="checkbox"/>	Box No. VII	Certain defects in the international application																						
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application																						

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/008566

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:

international search (Rule 12.3 and 23.1(b))
 publication of the international application (Rule 12.4)
 international preliminary examination (Rule 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):

the international application as originally filed/furnished
 the description:
 pages 1-19 as originally filed/furnished
 pages* _____ received by this Authority on _____
 pages* _____ received by this Authority on _____

the claims:
 nos. 1-30 as originally filed/furnished
 nos.* _____ as amended (together with any statement) under Article 19
 nos.* _____ received by this Authority on _____
 nos.* _____ received by this Authority on _____

the drawings:
 sheets 1/16-16/16 as originally filed/furnished
 sheets* _____ received by this Authority on _____
 sheets* _____ received by this Authority on _____

a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. The amendments have resulted in the cancellation of:

the description, pages _____
 the claims, nos. _____
 the drawings, sheets/figs _____
 the sequence listing (specify): _____
 any table(s) related to sequence listing (specify): _____

4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

the description, pages _____
 the claims, nos. _____
 the drawings, sheets/figs _____
 the sequence listing (specify): _____
 any table(s) related to sequence listing (specify): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/008566

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
-----------	---

1. Statement

Novelty (N)	Claims	5-6, 8, 24-30	YES
	Claims	1-4, 7, 9-23	NO
Inventive step (IS)	Claims	5-6, 24-28	YES
	Claims	1-4, 7-23, 29-30	NO
Industrial applicability (IA)	Claims	1-30	YES
	Claims		NO

2. Citations and explanations (Rule 70.7)

1. The following documents cited in the search report are mentioned in the present report; the numbering given below will be used throughout the rest of the procedure:

D1: DE-C-37 22 554;

D2: WO-A-86/02537;

2. The present application does not fulfil the requirements set forth in PCT Article 33(1) because the subject matter of independent claims 1 and 23 does not comply with the requirement of novelty defined in PCT Article 33(2).

2.1 Document D1 (column 5, line 67 to column 6, line 66 and column 9, lines 6-27; figures 1, 5 and 11) describes (cf. claim 1):

- a device (1) for preparing a beverage by injecting water through a capsule (9) containing a substance to be dissolved or extracted,
- which device includes at least one water-injecting system (7) for injecting water into said capsule (9),

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/EP2004/008566Box No. V **Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

- which injecting system is switchable so that it can be selected in at least two different substance-wetting modes (*one mode in figure 5 and another mode in figure 11*) in such a way that substance wetting can be modified depending on the capsule type.

Moreover, document D2 (page 4, line 15 to page 5, line 14) also describes all of the features in claim 1 (two wetting modes = control of the liquid passing through the capsule).

2.2 Document D1 describes (cf. claim 23):

a method for preparing a beverage by injecting water through a capsule containing a substance to be dissolved, wherein the liquid is injected through said capsule in accordance with at least two different injection modes (*one mode in figure 5 and another mode in figure 11*), each of which can be selected depending on the capsule type.

What is more, document D2 also describes (page 4, line 15 to page 5, line 14) all of the features in claim 23 (two wetting modes = control of the liquid passing through the capsule).

As a result, the subject matter of claims 1 and 23 is not novel (PCT Article 33(1) and (2)).

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/008566

Box No. V	<u>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</u>
	<p>3. Dependent claims 2-4 and 24 do not appear to contain any additional features which, in combination with the features of any one of the claims on which they are dependent, might define subject matter that fulfils the PCT requirement of novelty, for the following reasons:</p> <ul style="list-style-type: none">• claims 2-4: the injection in figure 11 (D1) is deeper; and• claim 24: the injection points in D2 are in separate numbers (12). <p>4. The combination of features in claims 5, 7 and 25 is not found in the prior art and cannot be derived in an obvious manner therefrom.</p>